

ESTTA Tracking number: **ESTTA341087**

Filing date: **04/06/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184213
Party	Plaintiff Galaxy Metal Gear, Inc.
Correspondence Address	Jen-Feng Lee LT Pacific Law Group 17800 Castleton Street, #383 Industry, CA 91748 UNITED STATES jfree@ltpacificlaw.com, ktanji@ltpacificlaw.com
Submission	Other Motions/Papers
Filer's Name	Jen-Feng Lee
Filer's e-mail	jfree@ltpacificlaw.com, dhsu@ltpacificlaw.com
Signature	/jfree/
Date	04/06/2010
Attachments	ReqJudNotc-Complaint.pdf (14 pages)(372521 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No.: 78914975

Filed: 6/22/2006

Mark: METAL GEAR

GALAXY METAL GEAR, INC.,

Opposer,

vs.

DIRECT ACCESS TECHNOLOGY, INC.

Applicant.

Opposition No.: 91184213

Action filed: May 20, 2008

OPPOSER'S Request for Judicial Notice

OPPOSER'S Request for Judicial Notice

Opposer Galaxy Metal Gear, Inc., hereby Request the Board the judicially notice a copy of the Complaint, filed by Galaxy against DAT, alleging defamation and related causes of action, due to DAT's publication of a "infringement" letter, referring to a first TTAB action between DAT and Galaxy which resulted in no adjudication on the merits of the case.

A copy of said Complaint is attached here; which was also included in the end of Opposer's main brief.

Said Complaint, and the DAT's Cross-Complaint, served to assist the understanding for the factual and legal issues in this proceeding, including the "standing" issue raised by DAT for the first time in its Reply Brief.

Respectfully submitted,

Dated: April 6, 2010

/jflee/

LT Pacific Law Group LLP
Jen-Feng (Jeff) Lee
Kenneth Tanji, Jr.
Attorneys for Opposer,
Galaxy Metal Gear Inc.
LT Pacific Law Group LLP
17800 Castleton St., #383
City of Industry, CA 91748
Tel: 626-710-8200
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Certificate of Service

The undersigned Attorney hereby certifies that a true copy of the foregoing OPPOSER'S Request for Judicial Notice was served by depositing a copy of same in the United States mail, first class postage prepaid, to the following address on 04/06/2010.

Michael Olson, Esq.
Law Offices of Michael C. Olson
1400 Bristol St. N.
Suite 270
Newport Beach, CA 92660

/jflee/

Jen-Feng Lee

COPY
CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

DEC 17 2007

John A. Clarke, Executive Officer/Clerk
By *B.M. Swain*, Deputy
B.M. SWAIN

Jen-Feng Lee, SBN 204328
Aime M. Katambwe, SBN 201984
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Attorneys for Plaintiff
GALAXY METAL GEAR, INC.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

GALAXY METAL GEAR, INC.,

Plaintiff,

vs.

DIRECT ACCESS TECHNOLOGY, INC.,

Defendant.

CASE NO.: BC382375

COMPLAINT FOR:

1. DEFAMATION
2. FALSE ADVERTISEMENT
3. UNFAIR COMPETITION
4. INTERFERENCE WITH ECONOMIC RELATIONSHIP

COME NOW, PLAINTIFF GALAXY METAL GEAR, INC. ("GALAXY" or "Plaintiff") for its Complaint, allege as follows:

1. Plaintiff Galaxy is a corporation having principal place of business at 5585 Daniels Street, #c, Chino, California 91710.
2. On information and belief, Defendant Direct Access Technology Inc. ("DAT" or "Defendant") is a corporation having principal place of business at 19957 E. Harrison Avenue, City of Industry, California 91789.
3. Collectively, GALAXY and DAT are sometimes referred to as "Parties".

Complaint

Statement of Facts and General Allegation

4. GALAXY is in the business of, among others, offering for sales computer accessories including enclosures for external hard drive. GALAXY has the common law trademark right to its unregistered mark of GALAXY METAL GEAR BOX ("Galaxy Mark"), as attached in Exhibit A.
5. On information and belief, DAT is also in the business of, among others, offering for sales computer accessories including enclosures for external hard drive. DAT claims to have a common law trademark right to its unregistered mark of METAL GEAR.
6. Both GALAXY and DAT applied to United States Patent and Trademark Office ("USPTO") for their respective trademarks.
7. While both applications were pending, DAT initiated an opposition proceeding ("Opposition Proceeding") against GALAXY's trademark registration, in the Trademark Trial and Appeal Board (TTAB") of USPTO, proceeding number 91174214.
8. GALAXY decided that it would not pursue the registration of its Galaxy Mark and on 10/26/2007, filed a Stipulated Abandonment of its Galaxy Mark application and Withdrawal of Opposition, having DAT sign off to the Stipulation. Said Opposition Proceeding terminated pursuant to Parties' Stipulation.
9. As of 11/20/2007, GALAXY's application to USPTO for its Galaxy Mark was abandoned. See attached Notice of Abandonment in Exhibit B.
10. GALAXY decided that it is more cost-effective to switch to another trademark than to fight DAT in the TTAB Opposition Proceeding re the issue of registrability.
11. In late November of 2007, GALAXY's customers forwarded to GALAXY a letter they received from Mr. Michael Olson, an attorney representing DAT,

Complaint

1 dated 11/19/2007, having subject line "Sale of infringing products/Metal Gear
2 trademark". Said letter ("DAT Letter") is attached herein as Exhibit C.

3 12. Said DAT Letter made the false statement that "Those proceedings terminated
4 with Galaxy Metal Gear agreeing to abandon any claim to the Galaxy Metal Gear
5 mark".

6 13. Said DAT Letter made the false statement that GALAXY was engaging in the
7 "Sale of infringing products" (on the subject line).

8 14. Said DAT Letter made the false statement that GALAXY was selling
9 "counterfeit products".

10 15. DAT knew that there was no determination of "infringement" in a TTAB
11 proceeding. DAT knew that the Opposition Proceeding terminated by mutual
12 stipulation, wherein GALAXY gave up seeking registration of its Galaxy Mark,
13 without adjudication of any "confusingly similar" contention or any other legal
14 issues.

15 16. DAT nonetheless published and distributed such unfounded and false statements
16 of "infringement" and "counterfeit products", after termination of said
17 Opposition Proceeding wherein both DAT and GALAXY participated, clearly
18 intending to injure GALAXY's business reputation and goodwill and cause
19 monetary damages to GALAXY.

20 17. Some GALAXY's customers stopped buying from GALAXY, as a result of said
21 DAT Letter and as induced by said DAT Letter.

22 18. Some GALAXY's customers requested assurances from GALAXY, and
23 GALAXY promptly gave such assurances to hold them harmless. However, at
24 least one customer remained unwilling to continue doing business with
25 GALAXY despite given such assurances.

26 19. GALAXY suffered greatly by DAT's widespread falsity, entailing time and
27 money spent to repair its business relationship with customers that are affected
28 by DAT's malicious and false statements.

Complaint

FIRST CAUSE OF ACTION

(DEFAMATION)

20. Plaintiff GALAXY incorporates the allegations from paragraph 1 to 19 as if fully set forth herein.

21. DAT published false statements of GALAXY's "'infringement" and selling "counterfeit products", when in fact there was no such adjudication, coming out from a TTAB proceeding.

22. DAT intended to disgrace Plaintiff and cause monetary damages to Plaintiff.

23. Plaintiff is injured, both to its business goodwill and revenue, as a result of DAT's false and malicious statements.

SECOND CAUSE OF ACTION

(FALSE ADVERTISEMENT)

24. Plaintiff GALAXY incorporates the allegations from paragraph 1 to 23 as if fully set forth herein.

25. DAT seeks business from Plaintiff's customers by advertising to them and published false statement of GALAXY's "'infringement" and selling "counterfeit products", when in fact there was no such adjudication, coming out from a TTAB proceeding.

26. Plaintiff's customers, at least some of them, were affected by such false statement as advertised by mass mailing of said DAT Letter and stopped doing business with Plaintiff.

27. Plaintiff is injured as a result of DAT's false advertisement.

THIRD CAUSE OF ACTION

(UNFAIR COMPETITION)

1 28. Plaintiff GALAXY incorporates the allegations from paragraph 1 to 27 as if fully
2 set forth herein.

3 29. Plaintiff GALAXY and Defendant DAT are competitors dealing with similar
4 products, selling to overlapping customers.

5 30. Defendant DAT fraudulently sent letters of “infringement” to GALAXY’s
6 customers by mis-using the result of a TTAB proceeding, which was abandoned,
7 pursuant to Parties’ stipulation, without adjudication of issues contended therein.

8 31. Defendant DAT knowingly made such false accusations of “infringement” and
9 “counterfeit products” to GALAXY’s customers, when such accusations are not
10 supported by alluding to the abandoned Opposition Proceeding, either in fact or
11 law.

12 32. Defendant DAT unfairly competed against GALAXY and as a result caused
13 damages to GALAXY.

14 **FOURTH CAUSE OF ACTION**

15 **(INTERFERENCE WITH ECONOMIC RELATIONSHIP)**

16 33. Plaintiff GALAXY incorporates the allegations from paragraph 1 to 32 as if fully
17 set forth herein.

18 34. Plaintiff GALAXY has existing business relationship with its customers.

19 35. Defendant DAT wrongfully made false and fraudulent statements about the result
20 of a TTAB Opposition Proceeding, influencing many of GALAXY’s customers
21 by the false accusations that GALAXY was selling “infringing products” and
22 “counterfeit products”.

23 36. Defendant DAT knew such accusation is not supported by law or by fact but still
24 caused such false statements to be sent to GALAXY’s customers.

25 37. As a result of DAT’s malicious interference, GALAXY has to spend time, effort
26 and money to repair such economic relationship.
27
28

38. As a result of DAT's malicious interference, several customers of GALAXY has decided not to place orders from GALAXY.

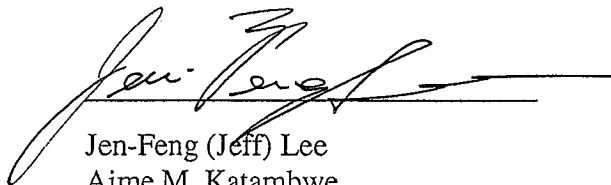
PRAYER FOR RELIEF

WHEREFORE, Plaintiff demand judgment against Defendant as set forth below.

1. Defendant to be found liable for the acts complained herein and to be discovered.
2. Defendant to be found liable for monetary damages, with accrued interest, for the amount of \$600,000, or an amount to be determined in this proceeding.
3. Defendant to be assessed for punitive damages for its wanton and malicious acts that caused great harm to Plaintiff.
4. An injunctive order be issued, prohibiting Defendant DAT from engaging further such and similar malicious activities as complained herein.
5. Defendant be found liable for Plaintiff's attorney fees and costs in bringing this lawsuit.
6. Such further relief as the court may deem just and proper.

Dated: December 13, 2007

WorldEsquire Law Firm, LLP



Jen-Feng (Jeff) Lee
Aime M. Katambwe
Kenneth Tanji, Jr.
Attorneys for PLAINTIFF
Galaxy Metal Gear, Inc.

EXHIBIT A

Galaxy
METAL GEAR BOX

EXHIBIT B



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

Nov 21, 2007

NOTICE OF ABANDONMENT

TM103

JEN-FENG LEE
WorldEsquire Law Firm, LLP
80 South Lake Avenue Ste #708
Pasadena, CA 91101

ATTORNEY
REFERENCE
NUMBER:

SERIAL NUMBER: 76/643964
MARK: GALAXY METAL GEAR BOX
APPLICANT: Galaxy Metal Gear Inc.

THE ABOVE IDENTIFIED TRADEMARK APPLICATION WAS ABANDONED
ON 11/20/2007 FOR THE FOLLOWING REASON:

AS A RESULT OF THE TRADEMARK TRIAL AND APPEAL BOARD
PROCEEDINGS, THE ABOVE IDENTIFIED APPLICATION STANDS
ABANDONED.

EXHIBIT C

LAW OFFICE OF MICHAEL C. OLSON

A Professional Corporation

1400 Bristol Street N.
Suite 270
Newport Beach, California 92660
(949) 442-8940
Fax: (949) 442-8935
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November 19, 2007

[REDACTED]
[REDACTED]
[REDACTED]

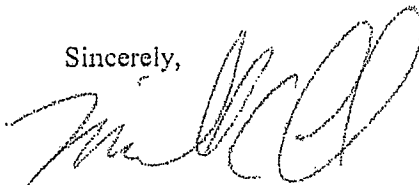
Re: Sale of infringing products/ Metal Gear trademark

Dear Sirs:

Please be advised that our firm represents Direct Access Technology, the owner of the Metal Gear trademark for external hard drive enclosures. Recently, Direct Access Technology was involved in proceedings before the Trademark Trial and Appeal Board of the United States Patent and Trademark office with Galaxy Metal Gear, Inc. Those proceedings terminated with Galaxy Metal Gear agreeing to abandon any claim to the Galaxy Metal Gear mark.

It has come to our attention that your company is selling or advertising for sale, on the [REDACTED] website, external hard drive enclosures bearing the Metal Gear mark or the Galaxy Metal Gear mark which did not originate with Direct Access Technology. We are demanding that you immediately cease and desist from selling or offering for sale these products as they are either confusingly similar to the mark owned by Direct Access Technology or are counterfeit products. If you have any questions about the authenticity of products bearing the Metal Gear mark, please do not hesitate to contact us.

Sincerely,



Michael C. Olson

MCO:so